

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-1007]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: The Board is publishing a final rule under Regulation E revising the time periods for investigating alleged errors involving point-of-sale and foreign-initiated transactions. The former rule extended the statutory time periods for these transactions to allow financial institutions a longer period to investigate before they must provisionally credit an account and a longer period to complete an investigation. The final rule requires financial institutions to provisionally credit an account within 10 business days (rather than 20) and leaves in place the 90 calendar day period to complete the investigation of an alleged error.

At the same time, the Board is extending the time periods to provisionally credit funds and investigate claims involving new accounts. The rule applies to claims made within 30 calendar days after an account is opened. The rule allows 20 business days for resolving an alleged error and up to 90 calendar days for completing the investigation.

DATES: This rule is effective September 24, 1998. Compliance is optional until April 1, 1999.

FOR FURTHER INFORMATION CONTACT: John C. Wood or Jane Jensen Gell, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693-1693r, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR Part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse,

telephone bill-payment system, or home banking program. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

II. Regulatory Revisions

Error Resolution--POS and Foreign Transactions

The EFTA requires a financial institution to investigate and resolve a consumer's claim of error--for an unauthorized EFT, for example--within specified time limits. Within 10 business days after receiving notice of an alleged error, an institution must either resolve the claim or provisionally credit the consumer's account while continuing to investigate. In the latter case, the institution must resolve the claim no later than 45 calendar days after receiving notice.

For foreign-initiated and POS transactions, Regulation E provides longer time periods adopted in 1982 and 1984, respectively. The regulation allows 20 business days to resolve a claim of error (or to provisionally credit an account if additional time is needed to investigate), and up to 90 calendar days to complete the investigation. The longer time periods generally allow issuers to avoid provisionally crediting an account before the investigation is complete.

In March 1998, the Board proposed to eliminate the extended time periods for investigating and resolving alleged errors in foreign-initiated transactions and POS transactions (63 FR 14555, March 25, 1998). The impetus for the proposal was the increased use of off-line debit cards that can be used without a personal identification number (PIN), often referred to as "check cards." The cards are used by signing a sales slip (much like a credit card), and may increase the risk of unauthorized access to a consumer's asset account.

In September 1997, a House Banking Subcommittee held a hearing on whether additional consumer protections are needed for off-line debit cards. At that hearing, the Board testified that it would reexamine its extended timing rules for resolving claims of errors for POS transactions. The Board noted that the importance of more prompt recrediting of consumers' funds pending investigation may outweigh any related compliance burden, especially in the case of an account that can be accessed without PIN protection. The Board noted that technological advances allow financial institutions to investigate claims of error more quickly than in the past, and thus the extended time periods may no longer be needed.

The Board received 55 comments on the proposal to reduce the extended time periods for POS and foreign transactions, primarily from financial institutions and their trade associations. About 45 commenters addressed the proposed reduction from 90 to 45 days in the time allowed for completing an investigation; the majority opposed the reduction. Those commenters stated that financial institutions still need the additional time to research claims, get information from the consumer, and obtain documentation such as receipts from the

merchant. Commenters noted that institutions may need additional time to investigate foreign-initiated transactions because of differences in technological capabilities, business customs, and language barriers. Several commenters believed that reducing the time to complete the investigation from 90 to 45 days would result in losses where financial institutions provide final credit only to later discover that the claim was not valid.

Many of those commenters did not object, however, to reducing the time period for providing provisional credit to 10 days. They recognized that in some situations it may be a hardship for a consumer to wait 20 business days before receiving credit for the amount of the alleged error. These commenters suggested that the Board consider reducing the time period for provisional crediting while retaining the extended time period for completing the investigation.

In response to comments and upon further analysis, the Board is revising the time periods for claims involving POS and foreign-initiated transactions to require institutions to provide provisional credit within 10, rather than 20 business days. The Board believes that the change will benefit consumers because they now will have access to their funds through provisional crediting sooner. The 90-day time period to complete the investigation remains unchanged. By leaving in place the 90-day time period, financial institutions will continue to have adequate time to complete the investigation and resolve the alleged error. Because POS and foreign transactions are more likely to involve occasional difficulty and delay in obtaining necessary information for the reasons discussed above, the Board believes that this extended time frame remains appropriate.

To take advantage of the longer time period (90 days) for resolving claims involving POS and foreign-initiated transactions, a financial institution must have disclosed these longer time periods. Financial institutions may disclose the time periods by making appropriate alterations to the error resolution notice in appendix A.

Error Resolution--New Accounts

In May 1996, the Board proposed to amend Regulation E to extend the error resolution time periods for new accounts, to address concerns of financial institutions (61 FR 19696, May 2, 1996). The problem arises when an individual opens an account with the intent to defraud. Such individuals may open an account, withdraw all or a large portion of the deposited funds through ATMs, and file a claim with the financial institution disputing the ATM transactions. Often the individual receives provisional credit because the financial institution is unable to conclude research of the claim (such as by obtaining photographic evidence from a nonproprietary ATM) within 10 business days of a claim. Once provisional credit is provided, the individual immediately withdraws those funds and abandons the account. Institutions believe that having more time to investigate errors involving new accounts would enable them to limit their losses and better control this type of fraud.

The Board proposed to allow 20 business days (rather than 10) for investigating an error before an institution must provisionally credit, and up to 90 calendar days (rather than

45) for resolving the claim. The Board solicited comment on the proposed extensions of time and on whether consumer protections relating to error resolution would be adversely affected. The Board also proposed a definition of a new account, consistent with the definition in Regulation CC, which implements the Expedited Funds Availability Act. Under Regulation CC, an account is considered a new account during the first 30 calendar days after the account is established.

Comments on the proposed rule, primarily from financial institutions and their trade associations, were generally favorable. But in light of the Board's commitment to reconsider the time periods applicable to POS and foreign-initiated transactions, the Board deferred final action on the new-account proposal.

The majority of commenters supported the extension of time for resolving errors involving new accounts. They believed that the additional time would not adversely affect consumers and would help financial institutions limit fraud.

Several commenters expressed concern with the proposed time frame. Commenters suggested that the Board allow an institution up to 30 business days to provide provisional credit so that financial institutions have enough time to obtain information from nonlocal banks. Some commenters urged the Board to revise the definition of a new account to apply to EFTs that occur 45 or up to 120 calendar days after the account is opened (instead of 30). These commenters believed that financial institutions need the longer time to establish the consumer's transaction pattern.

Other commenters believed that the outside limit for resolving claims should be between 45 and 60 days rather than 90 days. They believed it should not take financial institutions 90 days to receive the information necessary to resolve a claim.

Upon further analysis, the Board believes the time frames that were proposed are appropriate. Therefore, Regulation E is amended, pursuant to the Board's section 904(c) authority under the EFTA to provide for adjustments and exceptions in the regulation, to extend the time periods for resolving errors that involve new accounts. An institution must provisionally credit a new account if it takes longer than 20 business days to resolve an error, and it has up to 90 calendar days to complete the investigation and resolve the claim.

To provide consistency and ease regulatory compliance, the rule tracks the definition of "new account" in Regulation CC (12 CFR § 229.13(a)(2)). Thus, the rule applies to EFTs made during the first 30 calendar days after the first deposit to the account is made. The rules in Regulation E also parallel the interpretations of "new account" in Regulation CC. For example, an account is not considered a new account if a customer had another account at the financial institution for at least 30 calendar days.

The extended time periods apply to all EFTs that occur within this 30-day time period, including those for POS or foreign transactions. Therefore, if an alleged error concerns a POS or foreign EFT to or from a new account, financial institutions may take up to 20

business days to resolve the claim (or to provisionally credit an account if additional time is needed to investigate), and up to 90 calendar days to complete the investigation. The Board believes these time periods strike the appropriate balance between the need for consumers to have access to their funds and the need of financial institutions to combat fraud.

To use the longer time periods for resolving errors for new accounts, a financial institution must disclose these longer time periods. Financial institutions may disclose the time periods by making appropriate alterations to the error resolution notice in appendix A.

Technical Amendment to Error Resolution Notice

In 1996, the Board amended the error resolution procedures (§ 205.11) to allow institutions three days to notify the consumer about the outcome of its investigation in all cases. Before that time, the three-day rule applied only if the institution found that an error had not occurred. The Board has revised the text of the model error resolution notice (Appendix A, paragraph A-3) to conform the notice to § 205.11 as amended.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604), the Board has reviewed the final amendments to Regulation E. Two of the three requirements of a final regulatory flexibility analysis under this section are (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments. These two areas are discussed above.

The third requirement of the analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. The final amendments will apply to all financial institutions subject to Regulation E, including small institutions. The amendments represent relatively minor changes to the existing regulation; in some cases, the amendments clarify rights and duties of covered institutions or reduce economic burden. Accordingly, the amendments should not have a negative economic impact on small institutions, and, therefore, there were no significant alternatives that would have further minimized the economic impact on those institutions.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required or respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0200.

The collection of information that is revised by this rulemaking is found in 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of the Regulation E, Electronic Funds Transfer (EFT). The information is used to ensure adequate disclosure of basic terms, costs and rights relating to EFT services provided to consumers. The respondents and recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for twenty-four months as evidence of compliance. No comments specifically addressing the burden estimate were received.

The Board also extended the recordkeeping and disclosure requirements in connection with Regulation E for three years. It is estimated that there are 851 respondent/recordkeepers with an annual burden of 462,839 hours, as shown in the table below. The final rule will reduce the time periods allowed for investigating alleged errors involving point-of-sale (POS) and foreign-initiated transactions. The Board is also amending its rule to permit longer time periods to investigate claims involving new accounts. These changes are estimated to have no effect, on average, on reporting burden.

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
Initial Disclosure				
Initial terms	851	250	2.50 minutes	8,865
Change in terms	851	340	1.00 minute	4,822
Transaction disclosures				
Terminal receipts	851	71,990	0.25 minute	255,265
Deposit verifications	851	420	1.50 minutes	8,936
Periodic disclosures	851	12,800	1.00 minute	181,547
Error resolution rules	851	8	30.00 minutes	3,404
Total				462,839

Since the Federal Reserve does not collect any of the information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. Section 522 (b)(4), (6), and (8)). The disclosures and information about error allegations are confidential between the institutions and the consumer.

The Board has a continuing interest in the public's opinions of Federal Reserve collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

Text of Final Rule

Pursuant to the authority granted in sections 904(a) and (c) of the Electronic Fund Transfer Act, 15 U.S.C. 1693b(a) and (c), and for the reasons set forth in the preamble, the Board amends Regulation E, 12 CFR part 205, as set forth below:

Part 205 -- ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for Part 205 continues to read as follows:

Authority: 15 U.S.C. 1693-1693r.

2. Section 205.11 is amended by revising paragraph (c)(3) as follows:

§ 205.11 Procedures for resolving errors.

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(3) Extension of time periods. The time periods in paragraphs (c)(1) and (c)(2) are extended as follows:

(I) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (c)(2) if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.

(ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2), for completing an investigation, if a notice of error involves an electronic fund transfer that:

- (A) Was not initiated within a state;
- (B) Resulted from a point-of-sale debit card transaction; or
- (C) Occurred within 30 days after the first deposit to the account was made.

3. In Appendix A to Part 205, in A-3 MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b)), the undesignated second and third paragraphs following paragraph (a)(3) are revised to read as follows:

APPENDIX A TO PART 205—MODEL DISCLOSURE CLAUSES AND FORMS

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(a) Initial and annual error resolution notice (§§ 205.7(b)(10) and 205.8(b))

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We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

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By order of the Board of Governors of the Federal Reserve System, September 24, 1998.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,
Secretary of the Board